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No. 05 — OFFICE OF THE CLERK

In the
Supreme Court of the United States

THOMAS C. STALEY,
Petitioner,

VS.

PAMELA S. STALEY,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI —

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January 27, 2006

QUESTIONS PRESENTED FOR REVIEW

In 2002, Thomas Staley and his wife, Pamela Staley, divorced via a contract of divorce. In that private contract, the Staleys agreed to an equitable division of their property and payment of their marital debts. They also agreed to terms on the education, residency, and financial support of their four minor children. The contract terms were then incorporated into a Final Decree of Divorce by a Texas court.

Within 77 days of the divorce, Pamela petitioned the divorce court to modify the Decree—which in effect also sought to modify the Staley contract—by allowing changes to the residency and educational status of their children. Thomas never agreed to any of these contractual changes, and Pamela did not rescind the contract nor did she return any of the valuable consideration she had received under the contract. In modifying the decree, the trial court never made any findings that the Staleys agreed to change the contract terms, or that those terms were originally based on fraud, duress, or suffered from unconscionability.

The case went to jury trial on the basis that the contract and Decree did not comply with Texas Family Code §153.134, which requires that any decree concerning divorce designate one of the spouses as having the “exclusive right to designate the primary residence of the child.” The trial court asked the jury to determine whether Thomas or Pamela should be so designated, and the jury selected Pamela. The court entered final judgment accordingly, not only abrogating the contract terms, but also depriving Thomas of his Constitutional rights to equal protection of the laws and to parent his children.

Petitioner Thomas Staley presents the following questions:

1. Do Texas state statutes violate equal protection and destroy fundamental parental rights by requiring that one parent be designated as having "exclusive" power to determine a child's residence?

2. May a court unilaterally invalidate or change the terms of a binding contract by merely invoking a "best interests of the child" standard without finding that the parties either agreed to the changes or that the contract was originally based on fraud, duress, or unconscionability?

3. Is the "best interests of the child" standard unconstitutionally arbitrary on its face, or void for vagueness, making any judgment based on that standard likewise void?

PARTIES TO THE PROCEEDINGS

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(No parents or subsidiaries).

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PETITION FOR WRIT OF CERTIORARI

**To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:**

THOMAS C. STALEY respectfully petitions this Honorable Court for a writ of certiorari directed to the Supreme Court of Texas for the purpose of reviewing the decisions of the Texas appellate courts affirming the judgment of the 254th Judicial District Court, Dallas County, Texas, that destroyed Petitioner's valid contract rights without due process of law and violated his equal protection guarantees, and to invalidate two Texas statutes that infringe the Constitutional equal-protection and parental rights of fit Texas parents.

OPINIONS AND ORDERS BELOW

The final judgment of the 254th Judicial District Court, Dallas County, Texas, (titled "Order in Suit to Modify Parent-Child Relationship") is set forth in the Appendix (App.) at 15a-51a. The opinion of the Dallas Court of Appeals is set forth at App. 3a-14a. The order denying the Motion for Rehearing in the Court of Appeals is set forth at App. 2a. The order denying Petition of Review by the Supreme Court of Texas is set forth at App. 1a.

BASIS FOR JURISDICTION

The Supreme Court of Texas denied Petition for Review on 11/4/05. This made the judgment of the Dallas Court of Appeals the final judgment of the Texas courts. Certiorari is thus proper in accordance with 28 U.S.C. §1257 as a petition to review the final judgment or decree of the highest court in the State for violation of Petitioner's U.S. Constitutional

rights, and because a State statute is violative of rights guaranteed and protected by the U.S. Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION, AMEND. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of Indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION, AMEND. XIV, SECTION 1:

All persons born or naturalized in the United States , and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEXAS FAMILY CODE, §153.002

The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.